

Rosa v New York City Police Dept.
2012 NY Slip Op 31498(U)
June 1, 2012
Supreme Court, New York County
Docket Number: 403179/11
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BARBARA JAFFE Justice J.S.C.
BARBARA JAFFE Justice J.S.C.

PART 5

ROSA, RAUL

INDEX NO. 403179/11

MOTION DATE _____

NYC POLICE DEPARTMENT

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER JUDGMENT

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1419).

Dated: 6/1/12
JUN 01 2012

BARBARA JAFFE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : PART 5

-----x
 RAUL ROSA,

Index No. 403179/11

Claimant,

Motion Date: 3/7/12

Motion Seq. No.: 001

-against-

DECISION AND JUDGMENT

NEW YORK CITY POLICE DEPARTMENT,

Defendant.

-----x
 BARBARA JAFFE, JSC:

For claimant self-represented:

Raul Rosa
 10 A 6016
 Wende CF, PO Box 1187
 Alden, NY 14004-1187

For defendant:

Stacy L. Cohen, ACC
 Michael A. Cardozo
 Corporation Counsel
 100 Church St., 4th Fl.
 New York, NY 10007
 212-788-0609

By order to show cause dated December 13, 2011, claimant moves pursuant to General Municipal Law § 50-e for an order granting him leave to serve, *nunc pro tunc*, a late notice of claim. Defendant New York City Police Department (City) opposes.

On October 14, 2010, claimant, who is deaf and requires a sign language interpreter to communicate, alleges that he was assaulted and injured by police officers while they were arresting him, and that while he was in detention at various prison facilities, he was unable to file a notice of claim as no sign language interpreters were employed there. On February 7, 2011, claimant was transferred to his current facility and thereafter unsuccessfully attempted to file a notice of claim dated April 20, 2011 with the assistance of an interpreter. City rejected the notice as untimely. (Affidavit of Raul Rosa, dated Oct. 13, 2011).

City argues that the New York City Police Department is not an entity capable of being

sued, denies that claimant has asserted a reasonable excuse for his delay and observes that he offered no explanation as to why he was unable to file the instant application between February 7, 2011 and the motion date or why his disability prevented him from communicating in writing to request assistance, and denies that it had actual knowledge of the claim or incident or that it is not prejudiced by the delay as claimant's criminal records are sealed. (Affirmation of Stacey L. Cohen, ACC, dated Feb. 10, 2012).

In reply, claimant maintains that he has limited written English skills and was unable to prepare the notice of claim without the assistance of a sign language interpreter, and concedes that the correct defendant here is City. (Reply Affidavit, dated Feb. 23, 2012).

As claimant has alleged that police officers assaulted him and as he was criminally prosecuted for the arrest at issue, knowledge of his claim may be imputed to City. (*See Erichson v City of Poughkeepsie Police Dept.*, 66 AD3d 820 [2d Dept 2009] [city police department acquired actual knowledge of assault claim as police department employees engaged in conduct at issue]; *Ansong v City of New York*, 308 AD2d 333 [1st Dept 2003] [City's lack of knowledge of claim refuted by fact that officers who allegedly assaulted plaintiff had immediate knowledge of events at issue]; *Nunez v City of New York*, 307 AD2d 218 [1st Dept 2003] [as police department possessed all essential facts, actual knowledge imputed to City]; *Justiniano v New York City Hous. Auth. Police*, 191 AD2d 252 [1st Dept 1993] [knowledge of malicious prosecution claim could be imputed to municipality through officers who initiated prosecution]; *Goodall v City of New York*, 179 AD2d 481 [1st Dept 1992] [knowledge imputed to City as police investigated incident to prepare for criminal prosecution]; *Tatum v City of New York*, 161 AD2d 580 [2d Dept 1990], *lv denied* 76 NY2d 709 [police arrest report and District Attorney's

investigation may be considered actual or constructive knowledge to City]).

And in light of City's actual knowledge of petitioner's claims, there is no resulting prejudice. (*Nunez*, 307 AD2d at 220 [police department's investigation of alleged crime committed by petitioner and continued involvement in case until petitioner's release precludes substantial prejudice]; *Ansong*, 308 AD2d at 334 [respondent's claim of prejudice meritless as police and criminal court records pertaining to petitioner's arrest and prosecution presumably still exist]).

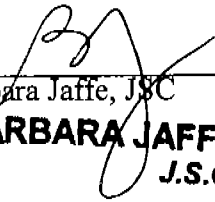
Finally, to the extent that petitioner has not set forth a reasonable excuse for his delay, its absence is not fatal under these circumstances. (*Ansong*, 308 AD2d at 334 [lack of reasonable excuse insufficient to deny late notice of claim especially as respondent had actual knowledge of claims and no prejudice resulted from delay]). In any event, absent any dispute that no sign language interpreters were available to claimant until after February 2011, his inability to prepare a notice of claim due to his disability constitutes a reasonable excuse for the delay.

As claimant has not yet served his notice of claim, the fact that he named the Police Department therein rather than City is irrelevant, especially as City was served with the instant application. Accordingly, it is hereby

ORDERED and ADJUDGED, that claimant's application for leave to serve a late notice of claim is granted on condition that: (1) within 30 days of the date of this order, claimant serve his notice of claim upon the City of New York; and (2) within 30 days of defendant's service on claimant of the required authorizations, claimant deliver to defendant signed authorizations for it to examine, inspect, and copy the file and record in the criminal proceeding against him, and to unseal the police records in connection therewith; and it is further

ORDERED and ADJUDGED, that in the event that claimant does not comply with this conditions within the timeframes reflected above after service upon him of a copy of this decision and order with notice of entry, then the notice of claim is stricken, and the motion for leave to serve a late notice of claim is denied.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: June 1, 2012
New York, New York

JUN 0 1 2012